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 5 11920 Southern Highlands Parkway, Suite 100
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 9 *Attorneys for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**
 11 **DISTRICT OF NEVADA**

12 STEVEN M. COLOSIMO and
 13 NATHANIEL A. PORTEOUS,
 14 individuals, on behalf of themselves and all
 15 other similarly situated employees,

CASE NO.: 2:19-cv00647

**STIPULATION AND
 ORDER TO AMEND AND
 REMAND**

16 Plaintiffs,

17 vs.

18 PRINCE TELECOM, LLC, a Delaware
 19 limited liability company; and DOES 1
 20 through 10, inclusive,

21 Defendants.

22 Plaintiffs, STEVEN M. COLOSIMO and NATHANIEL A. PORTEOUS,
 23 individuals, on behalf of themselves and all other similarly situated employees, by and
 24 through their counsel, MADDOX | ISAACSON | CISNEROS LLP, and PRINCE
 25 TELECOM, LLC, by and through their counsel, LITTLER MENDELSON, P.C.,
 26 stipulate as follows:

- 27 1. On February 28, 2019, Plaintiffs commenced this action in the Eighth
 28 Judicial District Court, Clark County, Nevada.
2. An Affidavit of Service was filed on April 1, 2019.

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1 3. On April 15, 2019, Defendant filed Notice of Removal of Action to
2 Federal Court, pursuant to 28 U.S.C. § 1446, removing the action to the United
3 States District Court for the District of Nevada.

4 4. On April 15, 2019, Defendant completed the removal process by filing
5 a conformed copy of the Notice of Removal with the Eighth Judicial District Court,
6 Clark County, Nevada.

7 5. After discussion, the parties have agreed that the Plaintiffs should be
8 allowed to amend their Complaint, as attached hereto as **Exhibit 1**.

9 6. Further, the parties agree that in light of the Amended Complaint,
10 Defendant’s pending Motion to Dismiss (ECF No. 8) shall be withdrawn without
11 prejudice and Defendant shall file a notice of non-opposition to Plaintiff’s pending
12 Motion to Amend and Remand (ECF No. 11) to the Eighth Judicial District Court,
13 Clark County, Nevada.

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7. The Parties further stipulate that each party shall bear its own attorneys' fees and costs with respect to the removal and subsequent remand of the Action pursuant to this Stipulation and proposed Order, submitted concurrently.


IT IS SO STIPULATED.

Dated: May 24, 2019

Dated: May 24, 2019

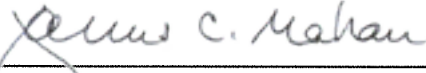
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LITTLER MENDELSON, P.C.

By: 
Troy L. Isaacson, Esq., NVB 6690
Norberto J. Cisneros, Esq., NVB 8782
Barbara McDonald, Esq., NVB 11651
11920 Southern Highlands Parkway
Suite 100
Las Vegas, Nevada 8914
Attorneys for Plaintiffs

By: /s/ Montgomery Y. Paek
Rick D. Roskelley, Esq., NVB 3192
Montgomery Y. Paek, Esq., NVB 10176
Neil C. Baker, Esq., NVB 14476
3960 Howard Hughes Parkway
Suite 300
Las Vegas, Nevada 89169
Attorneys for Defendant

IT IS SO ORDERED May 30, 2019.


UNITED STATES DISTRICT JUDGE

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CERTIFICATE OF SERVICE

I am a resident of the State of Nevada, over the age of eighteen years, and not a party to the within action. My business address is 11920 Southern Highlands Parkway, Suite 100, Las Vegas, Nevada 89141.

Pursuant to FRCP 5(b)(3) and LR 5-1, I hereby certify that on this 24th day of May, 2019, I served a true and correct copy of the above document, entitled **OPPOSITION TO DEFENDANT’S MOTION TO DISMISS PLAINTIFFS’ COLLECTIVE AND CLOASS ACTION COMPLAINT, AND MOTION TO AMEND**, via the Court’s electronic filing/service system (CM/ECF) to all parties on the current service list.

Rick D. Roskelley, Esq.
Littler Mendelson, P.C.
3960 Howard Hughes Parkway,
Suite 300
Las Vegas, NV 89169
Email Address: rroskelley@littler.com

Attorney For: Prince Telecom, LLC

I declare under penalty of perjury that the foregoing is true and correct. Executed on May 24, 2019, at Las Vegas, Nevada.



An employee of MADDOX | ISAACSON | CISNEROS LLP

EXHIBIT INDEX

Exhibit 1 - 1st Amended Collective and Class
Action Complaint.

EXHIBIT 1

MADDOX | ISAACSON | CISNEROS LLP
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9 *Attorneys for Plaintiffs*

10 **UNITED STATES DISTRICT COURT**
11 **DISTRICT OF NEVADA**

12 STEVEN M. COLOSIMO and
13 NATHANIEL A. PORTEOUS,
14 individuals, on behalf of themselves and all
15 other similarly situated employees,

16 Plaintiffs,

17 vs.

18 PRINCE TELECOM, LLC, a Delaware
19 limited liability company; and DOES 1
20 through 10, inclusive,

21 Defendants.

CASE NO.: 2:19-CV00647

**1st AMENDED COLLECTIVE
AND CLASS ACTION
COMPLAINT**

Arbitration Exemptions Claimed:

- 1) Class Action
- 2) Damages exceeding \$50,000
- 3) Significant issues of public policy
 - 1) Failure to pay minimum wages in violation of the Nevada Constitution;
 - 2) Failure to compensate for all hours worked in violation of NRS §§ 608.140 and 608.016;
 - 3) Failure to pay overtime in violation of NRS §§ 608.140 and 608.018;
 - 4) Failure to timely pay all wages due and owing in violation of NRS §§ 608.140 and 608.020-050;
 - 5) Failure to provide meal periods in violation of NRS §§ 608.140 and 608.019;

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6) Failure to provide rest periods in violation of NRS §§ 608.140 and 608.019;

JURY TRIAL DEMANDED

COME NOW Plaintiffs, STEVEN M. COLOSIMO and NATHANIEL A. PORTEOUS, individuals, on behalf of themselves and all other similarly situated employees, by and through their counsel, MADDOX | ISAACSON | CISNEROS LLP, and brings this First Amended Collective and Class Action Complaint, and alleges and brings claims against Defendants as follows:

JURISDICTION AND VENUE

1. The Nevada state court has jurisdiction over the state law claims alleged herein because the amount in controversy exceeds \$15,000 and because Plaintiffs have a private right of action for minimum wages for all hours worked pursuant to the Nevada State Constitution, Article 15, Section 16(B), which states, in relevant part:

An employee claiming violation of this section may bring an action against his or her employer in the courts of this State to enforce the provisions of this section and shall be entitled to all remedies available under the law or in equity appropriate to remedy any violation of this section, including but not limited to back pay, damages, reinstatement or injunctive relief. An employee who prevails in any action to enforce this section shall be awarded his or her reasonable attorney’s fees and costs.

2. In addition, this court has jurisdiction over the Nevada statutory claims alleged herein because a party seeking to recover unpaid wages has a private right of action pursuant to NRS Chapter 608. *Neville v. Eighth Judicial Dist. Ct.*, 133 Nev. Adv. Rep. 95, 406 P.3d 499, 500-01 (2017).

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1 Nevada, with its principal place of business in New Castle, Delaware, and at all times
2 hereinafter mentioned, an employer whose employees are engaged throughout this
3 county, the State of Nevada, and/or the various states of the United States of
4 America.

5 8. At all relevant times herein, Defendant PRINCE TELECOM was/is
6 the employer of Plaintiffs and all Class Members alleged herein, and is an employer
7 engaged in commerce under the provisions of NRS § 608.011.

8 9. Defendant PRINCE TELECOM engages in for-profit business which
9 has gross revenue in excess of \$500,000.00 per annum and is engaged in the
10 production of goods for interstate commerce and/or the use and/or handling of
11 goods which have moved in interstate commerce.

12 10. Plaintiffs are informed and believe, and thereon allege, that all of the
13 various violations of law that are alleged herein were committed intentionally and/or
14 willfully by Defendants.

15 11. The identity of DOES 1-50 is unknown at the time and the Complaint
16 will be amended at such time when the identities are known to Plaintiffs. Plaintiffs
17 are informed and believe that each Defendant sued herein as DOE is responsible in
18 some manner for the acts, omissions, or representations alleged herein.

19 12. Plaintiffs are informed and believe, and thereon allege, that DOES 1
20 through 10 are the partners, agents, owners, shareholders, managers or employees of
21 PRINCE TELECOM at all relevant times.

22 13. Plaintiffs are informed and believe, and thereon allege, that each and all
23 of the acts and omissions alleged herein was performed by, or is attributable to,
24 PRINCE TELECOM and/or DOES 1 through 10 (collectively "Defendants"), each
25 acting as the agent for the other, with legal authority to act on the other's behalf.
26 The acts of any and all Defendants were in accordance with, and represent, the
27 official policy of Defendants.

28

1 14. At all relevant times, Defendants, and each of them, ratified each and
2 every act or omission complained of herein. At all relevant times, Defendants, and
3 each of them, aided and abetted the acts and omissions of each and all the other
4 Defendants in proximately causing the violations herein alleged.

5 15. Plaintiffs are informed and believe, and thereon allege, that each of said
6 Defendants is in some manner intentionally, negligently, or otherwise responsible for
7 the acts, omissions, occurrences, and transactions alleged herein.

8 **FACTUAL ALLEGATIONS**

9 16. Defendants provide services such as residential and commercial
10 installations, digital converter deployment, high speed modem installations, home
11 security and automation, underground and aerial construction service. Defendants
12 contract with large cable providers, such as Comcast and Time Warner in order to
13 service businesses and residences throughout Nevada and nationwide.

14 17. Upon information and belief, Defendants maintain a single, centralized
15 Human Resources (“HR”) department at their corporate headquarters in New Castle,
16 Delaware, which is responsible for conducting Defendants’ recruiting and hiring of
17 new employees, as well as communicating and implementing Defendants’ company-
18 wide policies, including timekeeping policies, to employees throughout Nevada. In
19 particular, Plaintiffs and all other similarly situated employees, on information and
20 belief, received the same standardized documents and/or written policies.

21 18. Upon information and belief, the use of standardized documents
22 and/or written policies, including new hire documents, indicate that Defendants
23 dictated policies at the corporate-level and implemented them company-wide,
24 regardless of their employees’ assigned locations or positions.

25 19. On information and belief, all transactions regarding hiring,
26 terminations, promotions, pay increases, and employee transfers, etc., relating to
27 Defendants’ Nevada employees were submitted to and processed by Defendants’ HR
28 department in New Castle, Delaware.

1 20. On information and belief, Defendants' corporate records, business
2 records, data, and other information related to PRINCE TELECOM, including, in
3 particular, HR records pertaining to Defendants' Nevada employees, are also
4 maintained at PRINCE TELECOM's corporate headquarters in New Castle,
5 Delaware.

6 21. Upon information and belief, Defendants set forth uniform policies and
7 procedures in several documents including, but not limited to, Company Vehicle
8 Agreement, Employee Handbook, Policies, and Safety Training Manual, informing
9 them that they would be subject to the policies and rules set forth in the documents
10 provided.

11 22. Upon information and belief, Defendants maintain a centralized Payroll
12 department at their corporate headquarters in New Castle, Delaware, which
13 processes payroll for all non-exempt, hourly-paid Technicians working for
14 Defendants at their various locations in Nevada, including Plaintiffs and all other
15 similarly situated employees.

16 23. Based upon information and belief, Defendants issue the same
17 formatted wage statements to all non-exempt, hourly paid employees in Nevada,
18 irrespective of their work location. Upon further information and belief, during the
19 relevant time period, Defendants used third party ADP Payroll Services to process
20 and issue uniform, standardized wage statements to Plaintiffs and all other similarly
21 situated employees. Thus, Plaintiffs are informed and believe that all other similarly
22 situated employees throughout Nevada were also affected by Defendants' alleged
23 noncompliance with wage statement reporting requirements.

24 24. Upon information and belief, Defendants process payroll for departing
25 employees in the same manner throughout the State of Nevada, regardless of the
26 manner in which the employees' employment ends.

27 25. Defendants continue to employ non-exempt, hourly-paid employees
28 throughout Nevada.

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1 26. At all times relevant herein, Defendants' compensation system
2 employed a *de facto* piecework-without-minimum wage/overtime system, wherein
3 Plaintiffs and all other similarly situated employees were paid a certain amount for
4 each "piece" of work performed pursuant to a schedule; thereby, Plaintiffs and all
5 other similarly situated employees were not paid minimum wage or time and one-half
6 their "regularly hourly rate" for work in excess of forty hours per week as required by
7 Nevada law.

8 27. At all times relevant herein, Defendants further failed to pay Plaintiffs
9 and all other similarly situated employees for time spent in meetings.

10 28. Defendants produced false and misleading payroll records indicating
11 that either the proper overtime or some amount of overtime was being paid to
12 Plaintiffs and all other similarly situated employees, when in fact, no such overtime
13 was being paid, or in the alternative, Defendants used a compensation system that
14 did pay some overtime wages upon a designated hourly rate but failed to pay
15 overtime wages on the additional and substantial portion of the earnings of Plaintiffs
16 and all other similarly situated employees that were paid on a piece rate basis.

17 29. Defendants' violations of Nevada law were willful in that Defendants
18 were aware the method they were purporting to pay overtime under was illegal and
19 violated Nevada law; such violations were also willful because Defendants were
20 aware their piecework-without-minimum wage/overtime- system pay scheme had
21 been the subject of prior lawsuits by private parties alleging such schemes violated
22 state law; Defendants also evidenced their willful violations of state law by
23 concocting a false payroll record as to overtime pay and hours worked that had no
24 relationship to the overtime hours actually worked or the actual payment of overtime,
25 such false record being manufactured by Defendants in an attempt to conceal their
26 knowing and willful violations of Nevada law.

27 30. Plaintiffs are informed and believe, and thereon allege, that at all times
28 herein mentioned, Defendants were advised by skilled lawyers and other

1 professionals, employees and advisors knowledgeable about Nevada labor and wage
2 law, employment and personnel practices, and about the requirements of Nevada
3 law.

4 31. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs
5 and all other similarly situated employees were not paid for all hours worked, because
6 all hours worked were not recorded.

7 32. Plaintiffs are informed and believe, and thereon allege, that Defendants
8 knew or should have known that Plaintiffs and all other similarly situated employees
9 were entitled to receive certain wages for overtime compensation and that they were
10 not receiving certain wages for overtime compensation.

11 33. Plaintiffs are informed and believe, and thereon allege, that Defendants
12 knew or should have known that Plaintiffs and/or all other similarly situated
13 employees were entitled to be paid at a regular rate of pay, and corresponding
14 overtime rate of pay, that included all forms of remuneration paid to Plaintiffs and all
15 other similarly situated employees, including nondiscretionary bonuses and/or other
16 forms of compensation.

17 34. Plaintiffs are informed and believe, and thereon allege, that Defendants
18 knew or should have known that Plaintiffs and all other similarly situated employees
19 were entitled to receive at least minimum wages for compensation and that, in
20 violation of Nevada law they were not receiving at least minimum wages and
21 overtime wages for work that Defendants knew or should have known was
22 performed off-the-clock.

23 35. Plaintiffs are informed and believe, and thereon allege, that Defendants
24 knew or should have known that Plaintiffs and all other similarly situated employees
25 were entitled to meal periods in accordance with Nevada law.

26 36. Plaintiffs are informed and believe, and thereon allege, that Defendants
27 knew or should have known that Plaintiffs and all other similarly situated employees
28 were entitled to rest periods in accordance with Nevada law.

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1 37. Plaintiffs are informed and believe, and thereon allege, that Defendants
2 knew or should have known that they were obligated to separately compensate
3 Plaintiffs and all other similarly situated employees for rest periods when paying
4 them on a piece-rate basis. In violation of Nevada law, Defendants did not
5 separately compensate Plaintiffs and all other similarly situated employees for rest
6 periods.

7 38. Plaintiffs are informed and believe, and thereon allege, that Defendants
8 knew or should have known that Plaintiffs and all other similarly situated employees
9 were entitled to receive complete and accurate wage statements in accordance with
10 Nevada law. In violation of Nevada law, Defendants did not provide Plaintiffs and
11 all other similarly situated employees with complete and accurate wage statements.

12 39. Plaintiffs are informed and believe, and thereon allege, that Defendants
13 knew or should have known that Plaintiffs and all other similarly situated employees
14 were entitled to timely payment of wages upon termination of employment. In
15 violation of Nevada law, Defendants did not pay Plaintiffs and all other similarly
16 situated employees all wages due, including, but not limited to, overtime wages,
17 minimum wages, and meal and rest period premium wages, within permissible time
18 periods.

19 40. Plaintiffs are informed and believe, and thereon allege, that Defendants
20 knew or should have known that Plaintiffs and all other similarly situated employees
21 were entitled to timely payment of wages during their employment. In violation of
22 Nevada law, Defendants did not pay Plaintiffs and all other similarly situated
23 employees all wages, including, but not limited to, overtime wages, minimum wages,
24 and meal and rest period premium wages, within permissible time periods.

25 41. Plaintiffs are informed and believe, and thereon allege, that Defendants
26 knew or should have known that Plaintiffs and all other similarly situated employees
27 were entitled to receive full reimbursement for all business-related expenses and costs
28 they incurred during the course and scope of their employment, and that they did not

1 receive full reimbursement of applicable business-related expenses and costs they
2 incurred.

3 42. Plaintiffs are informed and believe, and thereon allege, at all times
4 herein mentioned, Defendants knew or should have known that they had a duty to
5 compensate Plaintiffs and all other similarly situated employees for all hours worked,
6 and that Defendants had the financial ability to pay such compensation but willfully,
7 knowingly, and intentionally failed to do so, and falsely represented to Plaintiffs and
8 all other similarly situated employees that they were properly denied wages, all in
9 order to increase Defendants' profits.

10 **CLASS AND COLLECTIVE ACTION ALLEGATIONS**

11 43. Plaintiffs re-allege and incorporate by reference all the paragraphs above
12 in the Complaint as though fully set forth herein.

13 44. Plaintiffs brings this action on behalf of themselves and all other
14 similarly situated employees and typical employees employed in Nevada as both a
15 collective action under Nevada law.

16 45. With respect to the Nevada statutory and Nevada common law claims
17 set forth herein, Plaintiffs bring this action on behalf of themselves and the following
18 similarly situated and typical employees ("Nevada class") in Nevada as a class action
19 pursuant to Nev. R. Civ. P. 23: All hourly paid employees employed by Defendants,
20 in the State of Nevada within two years immediately preceding the filing of this
21 action until the date of judgment after trial.

22 46. **The Class is Sufficiently Numerous.** Upon information and belief,
23 Defendants employ, and has employed, in excess of 25 Class Members within the
24 applicable statute of limitations. Because Defendants are legally obligated to keep
25 accurate payroll records, Plaintiffs allege that Defendants' records will establish the
26 identity and ascertainability of members of the Class as well as their numerosity.

27 47. The number of class members is so numerous that joinder is
28 impracticable and would involve many individual actions. Dispositions of these

1 claims in a class and/or collective action rather than in individual actions will benefit
2 the parties and the Court.

3 **48. Plaintiff's Claims are Typical to Those of Fellow Class Members.**

4 Each Class Member is and was subject to the same practices, plans, and/or policies
5 as Plaintiffs, as follows: (1) Defendants required Plaintiffs and all Class Members to
6 work under a *de facto* piecework-without-minimum wage/overtime system as herein
7 described, resulting in Plaintiffs and all Class Members not being paid for time
8 actually worked, at the proper minimum wage or overtime; (2) as a result of working
9 employees without compensation due to *de facto* piecework-without-minimum
10 wage/overtime system as herein described, Defendants failed to provide requisite
11 meal and rest periods; and (3) as a result of working employees without
12 compensation due to *de facto* piecework-without-minimum wage/overtime system as
13 herein described and not paying for time actually worked, Defendants failed to pay
14 Plaintiffs and Class Members who are former employees all wages due and owing at
15 the time of their termination or separation from employment.

16 **49. Common Questions of Law and Fact Exist.** There is a well-defined
17 community of interest in the questions of law and fact affecting the class as a whole.
18 Common questions of law and fact exist and predominate as to Plaintiffs and the
19 Class, including, without limitation the following: (1) whether the time recorded by
20 Plaintiffs and all other class Members but not paid due to Defendants' conduct as
21 herein described; (2) whether Defendants failed to pay a premium rate of one and
22 one half times their regular rate for all hours worked in excess of 40 hours a week,
23 and if they were paid less than one and one half the minimum wage, then for all
24 hours worked in excess of 8 hours a day; (3) whether Plaintiffs and Class Members
25 were compensated for "all time worked by the employee at the direction of the
26 employer, including time worked by the employee that is outside the scheduled hours
27 of work of the employee" pursuant to the Nevada Administrative Code ("NAC") §
28 608.115(1), and NRS § 608.016; and (4) whether Defendants delayed final payment to

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1 NRS § 608.250 (setting forth that the Labor Commissioner is to establish the
2 minimum wage).

3 54. Article 15, Section 16(B) of the Nevada Constitution further provides
4 that (1) the provisions of the section may not be waived by agreement between the
5 employee and employer; (2) an employee claiming violation of the section may bring
6 an action against the employer in the Nevada courts to enforce the provisions of the
7 section, “and shall be entitled to all remedies available under the law or in equity
8 appropriate to remedy any violation of the section, including but not limited to back
9 pay, damages, reinstatement or injunctive relief”; (3) an employee who prevails in any
10 action to enforce the section “shall be awarded her or her reasonable attorney’s fees
11 and costs.”

12 55. NRS § 608.260 provides:

13 If any employer pays any employee a lesser amount than the
14 minimum wage prescribed by regulation of the Labor Commissioner
15 pursuant to the provisions of NRS 608.250, the employee may, at any
16 time within 2 years, bring a civil action to recover the difference between
17 the amount paid to the employee and the amount of the minimum wage.
18 A contract between the employer and the employee or any acceptance of
19 a lesser wage by the employee is not a bar to the action.

20 56. Further, NRS § 608.140 provides reasonable attorney fees to a
21 prevailing employee.

22 57. As described above, due to Defendants’ company-wide scheduling
23 practices and policies, Plaintiffs and all other similarly situated employees were forced
24 to forego meal breaks and/or have their meal breaks interrupted by work and were
25 not relieved of all duties for unpaid meal periods and were not relieved of all duties
26 for unpaid meal periods, in order to complete their assigned installation
27 appointments. For the same reasons, Plaintiffs and all other similarly situated
28 employees were also required to perform work off-the-clock after their scheduled
shift to complete their assigned calls and appointments. In addition, Defendants

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1 systematically required Plaintiffs and all other similarly situated employees to clock
2 out for meal periods so that employee time records reflected meal periods were taken
3 when, in actuality, they were not. Defendants did not pay at least minimum wages
4 for off-the-clock hours that qualified for overtime premium payment. Also, to the
5 extent that these off-the-clock hours did not qualify for overtime premium payment,
6 Defendants did not pay at least minimum wages for those hours worked off-the-
7 clock.

8 58. Defendants’ failure to pay Plaintiffs and all other similarly situated
9 employees minimum wages violates the NV Constitution, Art. 15, Sec. 16; NRS §§
10 608.250, 608.260, and NAC § 608.100.

11 59. Wherefore, Plaintiffs demand for themselves and for Class Members
12 payment by Defendants at the minimum wage for all hours that were unlawfully
13 withheld for the two years immediately preceding the filing of this Complaint until
14 the date of judgment after trial, together with attorneys’ fees, costs, and interest as
15 provided by law.

16 **SECOND CLAIM FOR RELIEF**
17 **Failure to Pay Wages for All Hours Worked in Violation**
18 **of NRS §§ 608.140 and 608.016**
19 **(on Behalf of Plaintiffs and all members of the Class)**

20 60. Plaintiffs re-allege and incorporate by reference all the paragraphs above
21 in the Complaint as though fully set forth herein.

22 61. NRS § 608.140 provides that an employee has a private right of action
23 for unpaid wages. *Neville v. Eighth Judicial Dist. Ct.*, 133 Nev. Adv. Rep. 95, 406 P.3d
24 499, 500 (2017).

25 62. Further, NRS § 608.140 provides reasonable attorney fees to a
26 prevailing employee.

27 63. NRS § 608.016 requires that: “An employer shall pay to the employee
28 wages for each hour the employee works. An employer shall not require an employee
to work without wages during a trial or break-in period.”

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1 64. NAC § 608.115(1) requires: “An employer shall pay an employee for all
2 time worked by the employee at the direction of the employer, including time worked
3 by the employee that is outside the scheduled hours of work of the employee.”

4 65. Defendants did not pay employees for all time worked before the
5 commencement of the employee’s regular shift start time nor all time worked after
6 the end of their regularly scheduled shift time.

7 66. As described above, due to Defendants’ company-wide scheduling
8 practices and policies, Plaintiffs and all other similarly situated employees were forced
9 to forego meal breaks and/or have their meal breaks interrupted by work and were
10 not relieved of all duties for unpaid meal periods and were not relieved of all duties
11 for unpaid meal periods, in order to complete their assigned installation
12 appointments. For the same reasons, Plaintiffs and all other similarly situated
13 employees were also required to perform work off-the-clock after their scheduled
14 shift to complete their assigned calls and appointments. In addition, Defendants
15 systematically required that Plaintiffs and all other similarly situated employees to
16 clock out for meal periods so that employee time records reflected meal periods were
17 taken when, in actuality, they were not. Defendants did not pay at least minimum
18 wages for off-the-clock hours that qualified for overtime premium payment. Also, to
19 the extent that these off-the-clock hours did not qualify for overtime premium
20 payment, Defendants did not pay at least minimum wages for those hours worked
21 off-the-clock.

22 67. Defendants’ failure to pay Plaintiffs and all other similarly situated
23 employees minimum wages violates NRS § 608.016 and NAC § 608.115(1).

24 68. Defendants did not pay Plaintiffs and the Class for every hour worked.

25 69. Wherefore, Plaintiffs demands for themselves and for all Class
26 Members payment by Defendants at their regular rate of pay, or any applicable
27 overtime premium rate, whichever is higher, for the times worked each shift but not
28 paid, for two years immediately preceding the filing of this complaint until the date of

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1 judgment after trial, together with attorneys' fees, costs, and interest as provided by
2 law.

3 **THIRD CLAIM FOR RELIEF**

4 **Failure to Pay Overtime Wages in Violation of NRS 608.140 and 608.018**
5 (on Behalf of Plaintiffs and all members of the Class)

6 70. Plaintiffs re-allege and incorporate by this reference all the paragraphs
7 above in this Complaint as though fully set forth herein.

8 71. NRS § 608.140 provides that an employee has a private right of action
9 for unpaid wages.

10 72. Further, NRS § 608.140 provides reasonable attorney fees to a
11 prevailing employee.

12 73. NRS § 608.018(1) provides as follows:

13 An employer shall pay 1 1/2 times an employee's regular wage
14 rate whenever an employee who receives compensation for employment
15 at a rate less than 1 1/2 times the minimum rate prescribed pursuant to
16 NRS 608.250 works:

17 (a) More than 40 hours in any scheduled week of work;

18 or

19 (b) More than 8 hours in any workday unless by mutual
20 agreement the employee works a scheduled 10 hours per day for 4
21 calendar days within any scheduled week of work.

22 74. NRS 608.018(2) provides as follows:

23 An employer shall pay 1 1/2 times an employee's regular wage
24 rate whenever an employee who receives compensation for employment
25 at a rate not less than 1 1/2 times the minimum rate prescribed pursuant
26 to NRS 608.250 works more than 40 hours in any scheduled week of
27 work.

28 75. Defendants have, on a company-wide basis, failed to implement any
policies to authorize and permit technicians like Plaintiffs and all other similarly
situated employees to take compliant meal periods and instead, engage in a practice

1 of discouraging and impeding technicians from taking meal periods by requiring that
2 they complete jobs within set times. Defendants have, on a company-wide basis,
3 failed to schedule technicians for meal periods even though they are aware and know
4 that employees are entitled to such meal periods. For example, within the relevant
5 time period, Plaintiffs frequently worked through their shift of 8 to 10 hours without
6 being relieved of their duties to take a meal period. As a result of this company-wide
7 failure to schedule meal periods, Plaintiffs and all other similarly situated employees
8 were rarely, if ever, permitted and authorized to take uninterrupted 30-minute meal
9 periods during shifts to which they were entitled to receive a meal period.
10 Additionally, Defendants systematically, and on a company-wide basis, scheduled and
11 dispatched their technicians to respond to installation appointments without building
12 in sufficient time to allow for 30-minute meal periods, such that Plaintiffs and all
13 other similarly situated employees were prevented from taking all timely,
14 uninterrupted thirty (30) minute meal periods, and also led to them working off-the-
15 clock after their shifts and/or during their meal periods to complete their assigned
16 appointments. Appointments regularly took longer than the time Defendants
17 allotted for them such that Plaintiffs and all other similarly situated employees were
18 not able to take compliant meal period(s). And, upon information and belief,
19 Defendants had no mechanism in place to permit Plaintiffs and all other similarly
20 situated employees to take meal periods when the schedule was thrown off because
21 one or more of their appointments took longer than the scheduled time.
22 Defendants' company-wide policy and/or practice of allotting too little time for the
23 technicians to actually complete the jobs, while still requiring that technicians be on
24 time for their next appointment, prevented Plaintiffs and all other similarly situated
25 employees from being relieved of their duties for meal periods.

26 76. Further, Defendants systematically and on a company-wide basis
27 required their technicians to clock out for meal breaks that were never taken, or were
28 late, short, and/or interrupted, or otherwise later altering records to show that meal

1 breaks had been taken. As a result of Defendants' scheduling practices and/or
2 policies, Plaintiffs and all other similarly situated employees routinely had meal
3 periods that were missed, late, short, and/or interrupted. In addition, Defendants
4 did not provide Plaintiffs and all other similarly situated employees with second 30-
5 minute meal periods on days that they worked in excess of 10 hours in one day.
6 Plaintiffs and/or all other similarly situated employees did not sign valid meal break
7 waivers on days that they were entitled to meal periods but were not relieved of all
8 duties.

9 77. Defendants also had a company-wide practice and/or policy of
10 requiring Plaintiffs and all other similarly situated employees to carry a company
11 cellular phone which they were encouraged to leave on and answer during the
12 workday, including during meal breaks, upon threat of being disciplined or written up
13 for failing to communicate. For example, Plaintiffs frequently would have their meal
14 breaks interrupted by his supervisor calling them on the company cellular phone
15 requesting that they work on the next job. Defendants knew or should have known
16 that Plaintiffs and all other similarly situated employees were being made to
17 communicate with their supervisors while off-the-clock in order to meet Defendants'
18 expectations, but failed to compensate them for this off-the-clock work. And,
19 although Defendants' supervisors regularly contacted Plaintiffs on their company
20 cellular phone while they were clocked out for their meal breaks to discuss work-
21 related matters, Defendants failed to pay them for this time. Defendants knew or
22 should have known that as a result of its policies, that Plaintiffs and all other similarly
23 situated employees were performing some of their assigned duties off-the-clock
24 and/or during meal periods and were suffered or permitted to perform work for
25 which they were not paid. Defendants also knew, or should have known, that it did
26 not compensate Plaintiffs and all other similarly situated employees for this off-the-
27 clock work.

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1 78. Because Plaintiffs and all other similarly situated employees sometimes
2 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more,
3 some of this off-the-clock work qualified for overtime premium pay. Therefore,
4 Plaintiffs and all other similarly situated employees were not paid overtime wages for
5 all of the overtime hours they worked. Defendants' failure to pay Plaintiffs and all
6 other similarly situated employees the balance of overtime compensation violates the
7 provisions of Nevada law.

8 79. Furthermore, Defendants did not pay Plaintiff and all other similarly
9 situated employees the correct overtime rate for the recorded overtime hours that
10 they generated. In addition to an hourly wage, Defendants paid Plaintiffs and/or all
11 other similarly situated employees incentive pay and/or nondiscretionary bonuses.
12 However, in violation of Nevada law, Defendants failed to incorporate all
13 remunerations, including incentive pay and/or nondiscretionary bonuses, into the
14 calculation of the regular rate of pay for purposes of calculating the overtime wage
15 rate. Therefore, during times when Plaintiffs and/or other all other similarly situated
16 employees worked overtime and received these other forms of pay, Defendants
17 failed to pay all overtime wages by paying a lower overtime rate than required.

18 80. Because of this Defendants' unlawful conduct as herein described,
19 Defendants did not pay Plaintiffs and the Class for all time worked before the
20 commencement of the employee's regular shift start time nor all time worked after
21 the end of their regularly scheduled shift time.

22 81. Because of this Defendants' unlawful conduct as herein described,
23 Defendants did not pay Plaintiffs and Class Member daily overtime premium a
24 regular rate of less than one and one half times the minimum wage premium pay and,
25 failed to pay a weekly premium overtime rate of pay of time and one half their
26 regular rate for all members of the Class Members who worked in excess of forty
27 (40) hours in a week in violation of NRS §§ 608.140 and 608.018.

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1 the sum agreed upon in the contract of employment for each day the employer is in
2 default, until the employee is paid in full, without rendering any service therefor; but
3 the employee shall cease to draw such wages or salary 30 days after such default.”

4 89. By failing to pay Plaintiffs and all members of the Class who are former
5 employees for all hours worked in violation of state law, at the correct legal rate,
6 Defendants have failed to timely remit all wages due and owing to Plaintiffs and all
7 members of the Class who are former employees.

8 90. Despite demand, Defendants willfully refuses and continues to pay
9 Plaintiffs and all Class Members who are former employees.

10 91. Wherefore, Plaintiffs demand thirty (30) days wages under NRS §§
11 608.140 and 608.040, and an additional thirty (30) days wages under NRS 608.140
12 and 608.050, for all members of the Class who are former employees together with
13 attorneys’ fees, costs, and interest as provided by law.

14 **FIFTH CLAIM FOR RELIEF**

15 **Failure to provide meal periods in violation of NRS §§ 608.140 and 608.019**
16 **(on Behalf of Plaintiffs and the Class)**

17 92. Plaintiffs re-allege and incorporate by reference all the paragraphs above
18 in the Complaint as though fully set forth herein.

19 93. NRS § 608.019 (1) requires, “An employer shall not employ an
20 employee for a continuous period of 8 hours without permitting the employee to
21 have a meal period of at least one-half hour. No period of less than 30 minutes
22 interrupts a continuous period of work for the purposes of this subsection.”

23 94. NAC 608.16 requires, “Except as otherwise provided in NRS 608.0195
24 and 608.215, an employer shall pay to the employee wages for each hour the
25 employee works. An employer shall not require an employee to work without wages
26 during a trial or break-in period.”

27 95. During the relevant time period, Defendants had a company-wide
28 policy and/or practice of scheduling its technicians to respond to calls/appointments

1 in such a way that prevented Plaintiffs and all other similarly situated employees from
2 taking compliant meal periods. As a result of this practice and/or policy, Plaintiffs
3 and all other similarly situated employees were required to continue to perform their
4 duties without being able to take timely, compliant meal periods. Additionally,
5 Defendants prevented Plaintiffs and all other similarly situated employees from being
6 relieved of their duties for meal periods by discouraging Plaintiffs and all other
7 similarly situated employees from taking compliant breaks due to their policy of
8 requiring that technicians keep on and answer their company cellular phones, upon
9 threat of being disciplined or written up, even while clocked out for meal breaks.
10 Defendants also had a company-wide practice and/or policy of effectively clocking
11 out employees for meal breaks that were never taken, shortened, and/or interrupted.

12 96. As also stated, Defendants had a company-wide policy and/or practice
13 of failing to schedule Plaintiffs and all other similarly situated employees for meal
14 periods. Meanwhile, Defendants knew Plaintiff's and all other similarly situated
15 employees' appointments were scheduled such that they were constantly traveling to
16 additional appointments or being interrupted by supervisors calling about
17 appointments, which impeded and prevented them from taking uninterrupted 30-
18 minute meal periods. As a result of Defendants' failure to schedule meal periods,
19 Plaintiffs and all other similarly situated employees were made to continue to
20 perform their duties without taking timely, compliant meal periods. Defendants
21 further knew, or should have known, that they did not pay Plaintiffs and all other
22 similarly situated employees meal period premium wages when they were missed or
23 taken late.

24 97. At all times herein mentioned, Defendants knew or should have known
25 that as a result of these policies, Plaintiffs and all other similarly situated employees
26 were prevented from being relieved of all duties and required to perform some of
27 their assigned duties during meal periods and that Defendants did not pay Plaintiffs
28 and all other similarly situated employees meal period premium wages when they

1 were interrupted. As a result, Plaintiffs and all other similarly situated employees had
2 to work through some or all of their meal periods, have their meal periods
3 interrupted to hurry to the next call/appointment, and/or wait extended periods of
4 time before taking meal periods. For example, Plaintiffs and all other similarly
5 situated employees were made to work over 8 to 10 hours straight before Defendants
6 permitted and authorized them to take their meal periods. Furthermore, Defendants
7 did not provide Plaintiffs and all other similarly situated employees with second 30-
8 minute meal periods on days that they worked in excess of ten (10) hours in one day.
9 Defendants knew or should have known that their failure to schedule meal periods
10 would result in a failure to provide Plaintiffs and all other similarly situated
11 employees with full and timely meal periods as required by Nevada law.

12 98. Plaintiff and all other similarly situated employees did not sign valid
13 meal break waivers on days that they were entitled to meal periods but were not
14 relieved of all duties. Instead, and as stated, Defendants required Plaintiffs and all
15 other situated employees to sign blanket meal period waivers during the new-hire
16 process, which are invalid.

17 99. Moreover, Defendants engaged in a systematic, company-wide policy to
18 not pay meal period premiums. Alternatively, to the extent that Defendants did pay
19 Plaintiffs and all other similarly situated employees one (1) additional hour of
20 premium pay for missed meal periods, Defendants did not pay Plaintiff and/or all
21 other similarly situated employees at the correct rate of pay for premium wages
22 because Defendants failed to include all forms of compensation, such as incentive
23 pay and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the
24 extent Defendants paid Plaintiffs and all other similarly situated employees premium
25 pay for missed meal periods, it did so at a lower rate than required by law. As a
26 result, Defendants failed to provide Plaintiffs and all other similarly situated
27 employees compliant meal periods and failed to pay the full meal period premiums
28 due.

1 100. Defendants' conduct violates Nevada law. Plaintiff and all other
2 similarly situated employees are therefore entitled to recover civil penalties pursuant
3 to NRS § 608.140.

4 **SIXTH CLAIM FOR RELIEF**
5 **Failure to Provide Rest Periods in violation of NRS §§ 608.140 and 608.019**
6 **(on Behalf of Plaintiffs and the Class)**

7 101. Plaintiffs re-allege and incorporate by reference all the paragraphs above
8 in the Complaint as though fully set forth herein.

9 102. NRS § 608.019(2) provides:

10 Every employer shall authorize and permit all his or her
11 employees to take rest periods, which, insofar as practicable, shall be in
12 the middle of each work period. The duration of the rest periods shall be
13 based on the total hours worked daily at the rate of 10 minutes for each
14 4 hours or major fraction thereof. Rest periods need not be authorized
15 however for employees whose total daily work time is less than 3 and
16 one-half hours. Authorized rest periods shall be counted as hours
17 worked, for which there shall be no deduction from wages.

18 103. At all relevant times, NRS § 608.019(2) was applicable to Plaintiff and
19 all other similarly situated employees' employment by Defendants.

20 104. Under Nevada law, employers that use a piece-rate compensation
21 system must compensate employees separately for their rest periods. NRS §
22 608.019(2). A piece-rate compensation system that does not separately compensate
23 employees for rest periods does not comply with Nevada's minimum wage law.
24 NRS 608.016; NAC 608.115.

25 105. During the relevant time period, Defendants compensated Plaintiff and
26 all other similarly situated employees in various ways, including on a piece-rate basis
27 only for certain activities. However, Defendants did not separately compensate
28 Plaintiffs and all other similarly situated employees rest periods during the times they
were compensated on a piece-rate basis, as required. Defendants' failure to
separately compensate Plaintiffs and all other similarly situated employees for rest

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1 breaks when paying them on a piece-rate basis violates Nevada law.

2 106. During the relevant time period, Defendants regularly failed to
3 authorize and permit Plaintiffs and all other similarly situated employees to take 10
4 minute rest period per each four (4) hour period worked or major fraction thereof.
5 As with meal periods, Defendants' scheduling policies and practices, or lack thereof,
6 prevented Plaintiff and all other similarly situated employees from being relieved of
7 all duty in order to take compliant rest periods. Defendants similarly had no practice
8 or policy of scheduling rest periods for Plaintiff and all other similarly situated
9 employees. As a result, Plaintiff and all other similarly situated employees would
10 work shifts in excess of 3.5 hours without 10 minute rest periods to which they were
11 entitled. Throughout his employment, Plaintiffs regularly worked straight through
12 their shifts without taking 10 minute rest periods.

13 107. At the same time, Defendants implemented a company-wide policy to
14 not pay rest period premiums. Alternatively, to the extent that Defendants did pay
15 Plaintiffs and all other similarly situated employees one (1) additional hour of
16 premium pay for missed rest periods, Defendants did not pay Plaintiffs and/or all
17 other similarly situated employees at the correct rate of pay for premium wages
18 because Defendants failed to include all forms of compensation, such as incentive
19 pay and/or nondiscretionary bonuses, in the regular rate of pay. As a result, to the
20 extent Defendants paid Plaintiffs and all other similarly situated employees premium
21 pay for missed rest periods, it did so at a lower rate than required by law. As a result,
22 Plaintiffs and all other similarly situated employees were denied rest periods and
23 failed to pay the full rest period premiums due, in violation of Nevada law.

24 108. Defendants' conduct violates Nevada law. Plaintiff and all other
25 similarly situated employees are therefore entitled to recover civil penalties pursuant
26 to NRS § 608.140.

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9. For such other and further relief as the Court may deem just and proper.

DATED this _____ day of _____, 2019.

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By: _____

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